

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE SIXTEENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 12294 of 2004

Between:

M/s.Sri Venkateshwara Wines, Jannepally Village, Navipet Mandal, Nizamabad
District rep., by its Licensee R.Sudershan, s/o Lakshman

..... PETITIONER

AND

- 1 The Superintendent of Prohibition & Excise, Nizamabad District, Nizamabad.
- 2 The Inspector of Prohibition and Excise, Nizamabad Circle (SHO), Nizamabad District.
- 3 The Commissioner of Proh., & Excise, Government of Andhra Pradesh at Nampally, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of mandamus declaring the impugned proceedings of the 1st respondent vide proceedings CR.No.E2/48/NZB/2004 dt.6-7-2004 as illegal in respect of M/s.Venkateswara Wines, situated at Jannepally Village, Navipet Mandal, Nizamabad District

Counsel for the Petitioner: MR.B.SAI RAM GOUD

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court at the admission stage made the following:

ORDER:

This writ petition is filed by the petitioner aggrieved by the impugned order passed by the first respondent dated 06.07.2004 under which the licence of the petitioner was suspended on certain irregularities said to have been committed by him with reference to which, the first respondent proposed to conduct enquiry. Pending enquiry, the licence of the petitioner was suspended.

2. The main contention of the petitioner is that the first respondent exercised the power under Section 31 (1) (e) of Andhra Pradesh Excise Act, 1968 (for short 'the Act'). But, while exercising the said power under Section 31 (1) (e) of the Act, the first respondent failed to follow the proviso, which contemplates for issuance of a notice before suspending the licence. As the first respondent failed to follow the said proviso and also failed to comply with the principles of natural justice contemplated under the said proviso, the impugned order is liable to be set aside. The learned counsel for the petitioner also relied upon the decision of this Court in the case of GOKA BUJJAMMA VS. PROHIBITION AND EXCISE SUPERINTENDENT, SRIKAKULAM AND OTHERS which was rendered by a Division Bench following an earlier judgment of this Court in the case of K.SRINIVASA REDDY vs. SUPERINTENDENT, PROHIBITION AND EXCISE. Therefore, the learned counsel for the petitioner sought to quash the impugned order of suspension.

3. The learned Government Pleader, however, contended that the action of the petitioner was in violation of the provisions of Rule 41 (a) of the A.P. Indian Liquor and Foreign Liquor Rules, 1970 (for

short 'the Rules'). When once the petitioner contravened the Rules referred to above as well as the conditions of licence, the first respondent has got power to suspend the licence of the petitioner, therefore, there is no merit warranting interference.

4. Heard the learned counsel for the petitioner and the learned Government Pleader for Prohibition and Excise.

5. The main contention of the petitioner is that the first respondent failed to follow the proviso contained in Section 31 (1) (e) of the Act. A perusal of the said proviso clearly shows that no licence or permit shall be cancelled or suspended unless the licence holder is given an opportunity to give his representation against the action proposed. There is no dispute in the present case that, admittedly, the first respondent passed the order without giving any notice and opportunity to the petitioner. A similar issue was decided by a Division Bench of this Court in the case referred to earlier, wherein it was held that an order of suspension passed without giving notice and opportunity to the licensee, is illegal and liable to be set aside.

6. Under the above circumstances, the impugned order of suspension is set aside. However, it is open to the first respondent to issue show-cause notice to the petitioner and proceed with the enquiry in accordance with law.

7. With the above directions and observations, the writ petition is disposed of. No costs.

16.07.2004

Note: Issue CC by tomorrow.

(B/O)

VGB

To

- 1 The Superintendent of Prohibition & Excise, Nizamabad District, Nizamabad.
- 2 The Inspector of Prohibition and Excise, Nizamabad Circle (SHO), Nizamabad District.
- 3 The Commissioner of Proh., & Excise, Government of Andhra Pradesh at Nampally, Hyderabad.

4 2CCs to the Government Pleader for Prohibition and Excise, High Court Buildings, Hyderabad (OUT)

5 2CD copies